



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 12, 2022

IN THE MATTER OF:

Appeal Board No. 622707

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant refused an offer of suitable employment without good cause.

The Administrative Law Judge held telephone conference hearings, including a hearing held pursuant to a remand order of the Appeal Board (Appeal Board No. 618732) at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed March 28, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained, effective April 28, 2020, the employer's objection that the claimant should be disqualified from receiving benefits because the claimant refused an offer of suitable employment without good cause and overruled the initial determination.

The claimant applied to the Appeal Board, pursuant to Labor Law § 620 (3), for

a reopening and reconsideration of the Judge's decision. The Board considered the arguments contained in the written statement submitted on behalf of the claimant. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by Rochester Flooring Kitchen and

Bath Inc. ('RFK'), from April 13, 2019, through August 1, 2019, when she voluntarily separated from this employment.

Thereafter, the claimant was employed by another employer from September 9, 2019, through

March 22, 2020. She was furloughed without a definite date of return due to the COVID-19 pandemic.

On April 7, 2020, the claimant filed a claim for Unemployment Insurance benefits. Her claim was held to be effective March 23, 2020. After the employer RFK received the Unemployment Insurance report of claims, with the claimant's name listed, RFK contacted the New York State Department of Labor ('Department'). The Department advised RFK that it could offer employment to the claimant.

On April 27, 2020, the president of RFK, 'AP', telephoned the claimant. AP asked the claimant about the reason RFK had received the notice of her Unemployment Insurance claim and the claimant responded that she did not know the reason. AP asked about her most recent employment and the claimant told AP that she had a job but was furloughed from it due to COVID-19. AP did not offer the claimant her previous position.

OPINION: The credible evidence fails to establish that the claimant refused an offer of employment. We are not persuaded by AP's contention that he made a job offer on April 27, 2020. Significantly, at the initial hearing, AP testified that the claimant did not state that she was furloughed from another job. However, at the remand hearing, AP testified that she told him that she was furloughed from another job. Due to this inconsistent statement, we credit the claimant's consistent testimony that AP did not offer her a job during their phone call. Therefore, we conclude that the claimant did not refuse an offer of employment and that she is entitled to benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant refused an offer of suitable employment without good cause, is overruled.

The initial determination, holding the claimant eligible to receive benefits,

is sustained.

The claimant is allowed benefits with respect to the issue decided herein.

MARILYN P. O'MARA, MEMBER